

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

JOHN J. CAMBERS,

Plaintiff in Error,

vs.

THE FIRST NATIONAL BANK OF BUTTE (a Corporation),

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit Court for the District of Oregon.

FILED

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*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

August 25, 1906.

J. J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE et al.

Order Extending Time to Docket Cause.

Now, at this time, it appearing to the Court that there is not sufficient time in which the clerk of this court can prepare the transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in this cause, it is ordered that the time heretofore allowed in which to file said transcript of record in said Circuit Court of Appeals be, and the same is hereby, extended thirty days.

WILLIAM H. HUNT,

Judge.

[Endorsed]: No. 1408. United States Circuit Court of Appeals for the Ninth Circuit. Order Extending Time to Docket Cause. Filed Aug. 30, 1906. F. D. Monckton, Clerk. Re-filed Nov. 20, 1906. F. D. Monckton, Clerk.

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

October 1, 1906.

JOHN J. CAMBERS,

vs.

FIRST NATIONAL BANK OF BUTTE, AN-
DREW J. DAVIS, and GEORGE AN-
DREWS.

Order Extending Time to Docket Cause.

Now, at this day, for good cause to the Court shown, it is ordered that the time heretofore allowed the above-named plaintiff in which to file the transcript of record in this cause, in the Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended thirty days.

WM. B. GILBERT,

Circuit Judge.

[Endorsed]: No. 1408. United States Circuit Court of Appeals for the Ninth Circuit. Order Extending Time to Docket Cause. Filed Oct. 1, 1906. F. D. Monckton, Clerk. Re-filed Nov. 20, 1906. F. D. Monckton, Clerk.

Citation on Writ of Error.

United States of America,
District of Oregon,—ss.

To First National Bank of Butte, a Corporation,
Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Oregon, wherein John J. Cambers is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this August 7, 1906.

WILLIAM H. HUNT,

Judge.

Due service of within citation by certified copy is hereby accepted in Multnomah County in said district this 7th day of August, 1906.

DOLPH, MALLORY, SIMON & GEARIN,

Attorneys for Deft. First Natl. Bank of Butte.

[Endorsed]: U. S. Circuit Court, District of Oregon. John J. Cambers vs. First Natl. Bank of Butte. Citation on Writ of Error. Filed August 7, 1906. J. A. Sladen, Clerk. By G. H. Marsh, Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JOHN J. CAMBERS,

Plaintiff in Error,

vs.

FIRST NATIONAL BANK OF BUTTE (a Corporation),

Defendant in Error.

Writ of Error.

The United States of America—ss.

The President of the United States of America, to
the Judges of the Circuit Court of the United
States for the District of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court before the Honorable Charles E. Wolverton, one of you, between John J. Cambers, plaintiff and plaintiff in error, and First National Bank of Butte, a corporation, Andrew J. Davis and George W. Andrews, defendants and First National Bank of Butte, a corporation, defendant in error,

a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this August 7, 1906.

[Seal]

J. A. SLADEN,

Clerk of the Circuit Court of the United States for the District of Oregon.

By G. H. Marsh,

Deputy Clerk.

The within writ of error was served upon the Circuit Court of the United States for the District of

Oregon by lodging with me, as clerk of said court, a duly certified copy of said writ, on August 7, 1906.

J. A. SLADEN,

Clerk U. S. Circuit Court, District of Oregon.

By G. H. Marsh,

Deputy Clerk.

[Endorsed]: In the U. S. Circuit Court of Appeals for the Ninth Circuit. John J. Cambers, Plaintiff in Error, vs. First National Bank of Butte, Defendant in Error. Writ of Error. Filed August 7, 1906. J. A. Sladen, Clerk United States Circuit Court, District of Oregon. By G. H. Marsh, Deputy Clerk.

*In the Circuit Court of the United States for the
District of Oregon.*

October Term, 1904.

Caption.

Be it remembered, that on the 10th day of February, 1905, there was duly filed in the Circuit Court of the United States for the District of Oregon, an amended complaint, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Cor-
poration), ANDREW J. DAVIS, and
GEORGE W. ANDREWS,

Defendants.

Amended Complaint.

The plaintiff for a cause of action against the de-
fendants and each of them alleges:

That during all the times herein mentioned the
plaintiff has been and now is a citizen and resident
and inhabitant of the State of Oregon, residing in
Jackson County therein.

That during all the times herein mentioned the de-
fendant, First National Bank of Butte, has been and
now is a National Banking corporation, duly organ-
ized and existing under and by virtue of the laws of
the United States of America, and having its prin-
cipal place of business in the city of Butte, State of
Montana.

That during all the times herein mentioned the de-
fendants, Andrew J. Davis and George W. Andrews
have been and now are residents and citizens of the
State of Montana, and the said Andrew J. Davis has

been and during all the times herein mentioned now is the president of the said First National Bank of Butte.

That on the 19th day of April, 1902, the plaintiff had on deposit with the defendant bank at its place of business in Butte City, Montana, and the defendant bank held in trust for the plaintiff the sum of ten thousand (\$10,000.00) dollars, lawful money of the United States, and the property of the plaintiff.

That on the 19th day of April, 1902, the plaintiff, as party of the first part, entered into a written contract with these defendants as parties of the second part with reference to the retaining by the defendant bank, for the time and on the condition specified in the said contract, the said sum of ten thousand (\$10,000.00) dollars, a full, true and correct copy of which contract is hereto attached, marked Exhibit "A," and especially referred to and made a part hereof.

That on the 20th day of March, 1902, in the District Court of Silver Bow County, Montana, there was made and entered a joint judgment in favor of William B. Hamilton, Donald B. Gillies, William Lowery and D. D. McLaughlin, as plaintiffs, against the plaintiff herein, John J. Cambers, and the defendants, Andrew J. Davis and George W. Andrews, defendants therein, for the sum of twelve thousand five hundred (\$12,500.00) dollars, upon that certain injunction bond of date November 30th, 1897, for

fifteen hundred (\$1,500.00) dollars, and that certain injunction bond of date January 11th, 1898, for the sum of eleven thousand (\$11,000.00) dollars, both of which bonds are mentioned in said Exhibit "A" hereto attached. That the judgment for the sum of twelve thousand five hundred (\$12,500.00) dollars, mentioned in said Exhibit "A" was rendered in said action and said Court and cause upon the two said injunction bonds, and the liability of the said defendants Davis and Andrews, and of each thereof, upon said bonds and each of them was merged into said judgment.

That by the terms of said contract the defendant bank undertook and agreed to hold said sum of ten thousand (\$10,000.00) dollars, pending an appeal of said cause to the Supreme Court of the State of Montana and the termination of such appeal, and that if the defendants, Andrews and Davis, should be required to pay said sum of twelve thousand five hundred (\$12,500.00) dollars, or any part thereof, to indemnify them, from said sum of ten thousand (\$10,000.00) dollars, so held in trust for said purpose, but that if said defendants should not be required to pay said judgment or any part thereof, that then said bank should return to this plaintiff the said sum of ten thousand (\$10,000.00) dollars.

That the appeal from said judgment mentioned and contemplated in said contract was never perfected, and the time within which the same can be

perfected has long since gone by, and no appeal can now be taken from said judgment nor from any part thereof.

That within the sixty days immediately prior to the 21st day of August, 1902, an execution upon said judgment was duly issued and placed in the hands of the sheriff of said Silver Bow County, Montana, with direction to him to collect the said sum of \$12,500.00 from the defendants in said cause as by law provided, which execution was by its terms and by the law of Montana applicable thereto returnable within sixty days from the date thereof.

That on the 21st day of August, 1902, and before the time when said execution would have expired, and while the same was in full force and effect, said sheriff of Silver Bow County, Montana, returned said execution, fully satisfied, to the clerk of said district court. That by the laws of the State of Montana then in force, it became and was then the duty of said clerk to enter a satisfaction of said judgment upon the judgment docket of said court, and said clerk did thereupon, on said 21st day of August, 1902, duly enter a satisfaction of said judgment upon said judgment docket, and satisfy said judgment as to each and all the defendants in said cause, and said satisfaction when so entered constituted a full and complete satisfaction and discharge of said judgment, and the same was at said time fully satisfied and discharged. That by the laws then and now in

force in the State of Montana, the entry of said satisfaction of judgment by said clerk fully satisfied said judgment, and relieved each of said parties against whom said judgment had been entered from any liability thereon. That said satisfaction of judgment has never been vacated, set aside or annulled, and by the laws then and now in force in the State of Montana, the time within which said judgment could have been reinstated or the satisfaction thereof vacated has long since gone by.

That the defendants herein had not, nor had either or any of them, paid said judgment, or any part thereof prior to August 22, 1902, nor have they or either or any of them ever paid the same or any part thereof, nor are they or either or any of them liable to pay said judgment or any part thereof, nor can the same or any part thereof be enforced against them or either or any of them.

That the laws in force in the State of Montana at all times herein mentioned, governing the rate of interest, where no rate is provided by contract, entitle the plaintiff to interest at 8 per cent per annum, upon the said sum of ten thousand (\$10,00.00) dollars, from the date when the same became due and payable to the plaintiff, to wit, August 21, 1902. That by the terms of said contract said defendants, Andrews and Davis undertook and agreed that they would pay to the plaintiff interest at 6 per cent per

annum, upon the said sum of ten thousand (\$10,000.00) dollars, for so long a time from April 19th, 1902, as the said sum of ten thousand (\$10,00.00) dollars should remain on deposit with the said defendant bank.

That by reason thereof the plaintiff is entitled to recover from the defendants, Andrews and Davis, interest upon the said sum of ten thousand (\$10,000.00) dollars, at 6 per cent per annum, from April 19th, 1902, until the date when the said sum of ten thousand (\$10,000.00) dollars became payable from the defendant bank to the plaintiff, to wit, August 21, 1902, and is entitled to recover from said bank said sum of ten thousand (\$10,000.00) dollars, and interest from August 21, 1902, until paid, at the rate of 8 per cent per annum.

That the said sum of ten thousand (\$10,000.00) dollars is still on deposit with said defendant bank, and it has never repaid the same, or any part thereof to the plaintiff, although demand therefor has been made long prior to the filing of this action.

Wherefore the plaintiff demands judgment against the defendant, First National Bank of Butte, for the sum of ten thousand (\$10,000.00) dollars, and interest thereon from August 21st, 1902, at the rate of 8 per cent per annum until paid; and from the defendants Andrew J. Davis and George W. Andrews, interest at the rate of 6 per cent per annum upon the

sum of ten thousand (\$10,000.00) dollars from the 19th day of April, 1902, until the 21st day of August, 1902; together with his costs and disbursements herein to be taxed.

A. E. REAMES and
VEAZIE & FREEMAN,
Attorneys for Plaintiff.

Exhibit "A."

This agreement made and entered into this 19th day of April, 1902, by and between John J. Cambers of the State of Oregon, the party of the first part, and Andrew J. Davis, George W. Andrews and the First National Bank of Butte, Montana, all of the City of Butte, Montana, parties of the second part, witnesseth:

That whereas, the said John J. Cambers has on deposit with the First National Bank of Butte the sum of ten thousand (\$10,000.00) dollars, in accordance with the following stipulations and agreements, pending the appeal hereafter mentioned.

That whereas heretofore the said Andrew J. Davis and the said George W. Andrews, mentioned above, on or about the 30th day of November, 1897, executed and delivered as sureties a certain injunction bond on behalf of the said John J. Cambers, in the sum of fifteen hundred (\$1,500.00) dollars, in an action then pending in the District Court of Silver Bow County, State of Montana, wherein the said John J. Cambers

plaintiff, and one, William Lowery, and others, were defendants, and thereafter on or about the 11th day of January, 1898, the said Andrew J. Davis and George W. Andrews executed and delivered a certain other injunction bond or undertaking on behalf of the said John J. Cambers, in the sum of eleven thousand (\$11,000.00) dollars, in an action then pending in the Supreme Court of the State of Montana, wherein the said John J. Cambers was plaintiff and appellant, and William Lowery and others defendants and respondents, and that at this time the said Andrew J. Davis and George W. Andrews are desirous of having the said John J. Cambers indemnify and secure them against any and all liabilities which they may have incurred, and

Whereas, the said William Lowery, William B. Hamilton, David McLaughlin and Donald B. Gillies, as plaintiffs, v. John J. Cambers, Andrew J. Davis, George W. Andrews, John Doe and Richard Roe, defendants, cause No. 8038, in the District Court of Silver Bow County, State of Montana, obtained a judgment against the said defendants, and said judgment was made and given in favor of said plaintiffs and against said defendants in the sum of twelve thousand five hundred (\$12,500.00) dollars and costs, on the ——— day of ———, 1902, and the said John J. Cambers is desirous of appealing from the said judgment to the Supreme Court of the State of Montana,

and that it is necessary to give a supersedeas bond to stay execution on the said judgment:

It is therefore understood and agreed that the said sum of ten thousand (\$10,000.00) dollars now on deposit in the said First National Bank of Butte is to indemnify said Andrew J. Davis and George W. Andrews against any liability on the injunction bonds, and can be used in assisting said Cambers in securing said supersedeas bond, and First National Bank hereby agrees that said sum of ten thousand (\$10,000.00) dollars shall remain in said bank, subject, however, to secure the sureties upon any supersedeas bond given to stay execution on said judgment during the pendency of a motion for a new trial in the said District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, or pending the appeal to the Supreme Court of the State of Montana, and that this contract may be assigned for said purpose.

That said money shall not be drawn out of the said bank by any of said sureties of said Cambers, pending the appeal in said cause, but shall remain on deposit in the said bank to be paid to said sureties in repayment of any sum or sums which they may be required to pay as such sureties, and in case of no liability on the part of said sureties, or said George W. Andrews and Andrew J. Davis, by reason of said

injunction or stay bond, then to be paid to the said Cambers or his order.

It is further expressly understood and agreed that unless said John J. Cambers shall give a good and sufficient stay bond pending his said motion for a new trial in the said case, if required, or pending said appeal to the Supreme Court of the State of Montana, that this contract shall be null and void, and that one of the considerations on the part of the said Andrew J. Davis and George W. Andrews is that the said John J. Cambers shall give a good and sufficient stay bond to stay execution on the said judgment, and in the event said District Court shall fail or refuse to grant him a new trial, that he will perfect his appeal to the Supreme Court of the State of Montana, and give good and sufficient appeal bond pending said appeal, to the effect that the sureties are bound for double the amount named in the judgment.

That if the judgment and order appealed from or any part thereof be affirmed or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount to which the judgment order is affirmed, or affirmed only in part, and all damages or costs which may be awarded appellant on appeal.

It is further understood and agreed that the said Andrew J. Davis and the said George W. Andrews, in consideration of the deposit by the said John J. Cambers of the sum of ten thousand dollars (\$10,-

000.00), in the First National Bank of Butte, as aforesaid, agree to pay the said John J. Cambers or his agent, interest upon the said sum of ten thousand (\$10,000.00) dollars, at the rate of six per cent per annum from the date hereof, said interest to be paid semi-annually until said cause be decided on appeal, so long as said sum of ten thousand (\$10,000.00) dollars shall remain on deposit in said bank.

This agreement and stipulation is not intended to bar or prevent the said Andrew J. Davis or George W. Andrews, or either of them, from setting up or taking any defense to any action brought upon said injunction bonds, or either of them, or from taking any action that they may desire in protecting their interests in the premises, as to themselves.

Signed in triplicate this 19th day of April, 1902.

JOHN J. CAMBERS.

GEORGE W. ANDREWS.

ANDREW J. DAVIS.

FIRST NATIONAL BANK OF BUTTE,

By E. B. WEINER,

Cashier.

United States of America,
District of Oregon,
County of Jackson,—ss.

I, John J. Cambers, being first duly sworn, depose and say that I am the plaintiff in the above-entitled

action; and that the foregoing amended complaint is true as I verily believe.

JOHN J. CAMBERS.

Subscribed and sworn to before me this 7th day of February, 1905.

A. E. REAMES,

Notary Public for the State of Oregon.

State of Oregon,

County of Multnomah,—ss.

Due service of the within amended complaint is hereby accepted in Multnomah County, Oregon, this 10th day of February, 1905, by receiving a true copy thereof, duly certified to as such by one of the attorneys for the plaintiff.

DOLPH, MALLORY, SIMON & GEARIN,

By M. D.

Attorney for Deft.

Filed February 10, 1905. J. A. Sladen, Clerk
U. S. Circuit Court, for District of Oregon.

And afterwards, to wit, on the 13th day of February, 1905, there was duly filed in said court a stipulation allowing defendant time to plead, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Corporation), ANDREW J. DAVIS and
GEORGE W. ANDREWS,
Defendants.

Stipulation Allowing Defendant Time to Plead.

It is stipulated and agreed between the plaintiff and the defendant the First National Bank of Butte, a corporation, that said defendant First National Bank of Butte may have until March 1, 1905, in which to move or plead to the amended complaint herein filed.

VEAZIE & FREEMAN,

Attorneys for Plaintiff.

DOLPH, MALLORY, SIMON & GEARIN,

Attorneys for Defendant First National Bank of
Butte.

Filed February 13, 1905. J. A. Sladen, Clerk
U. S. Circuit Court, for District of Oregon.

And afterwards, to wit, on the 28th day of February, 1905, there was duly filed in said court a motion of defendant, First National Bank of Butte, to strike amended complaint from files, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE, AN-
DREW J. DAVIS and GEORGE W. AN-
DREWS,

Defendants.

Motion to Strike Amended Complaint from Files.

Now, at this time comes the defendant First National Bank of Butte, a corporation, and moves the Court to strike out and from the files of this Court the amended complaint of plaintiff filed herein—

1st. Because said amended complaint changes the nature of the action commenced by plaintiff from an action in tort to an action on contract.

2d. Because said amended complaint is not an amendment, but an original complaint, setting up an entirely new and distinct cause of action not embraced in the original complaint.

3d. Because said amended complaint substitutes for the cause of action originally stated one entirely different in nature and substance.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant, First National Bank of
Butte.

District of Oregon,—ss.

Due service of the within motion by the delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this 28th day of February, 1905, is hereby admitted.

J. C. VEAZIE,
Attorney for Plaintiff.

Filed February 28, 1905. J. A. Sladen, Clerk
U. S. Circuit Court, for District of Oregon.

And afterwards, to wit, on Thursday, the 9th day of March, 1905, the same being the 135th judicial day of the regular October term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

March 9, 1905.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE.

**Order Fixing Date of Hearing Motion to Strike
Amended Complaint from Files.**

Now, at this day, on motion of Mr. Frank F. Freeman, of counsel for the plaintiff herein, it is ordered that the hearing of this cause, upon the motion to strike out the amended complaint herein be, and the same is hereby, set for Tuesday, March 21, 1905.

And afterwards, to wit, on Tuesday, the 21st day of March, 1905, the same being the 145th judicial day of the regular October term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

March 21, 1905.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE.

**Hearing of Motion to Strike Amended Complaint
from Files.**

Now, at this day, comes the above-named plaintiff by Mr. Frank F. Freeman, of counsel, and the defendant by Mr. Joseph Simon, of counsel, and, thereupon this cause comes on to be heard upon the motion to strike from the files the amended complaint herein, and the Court having heard the arguments of counsel, will advise thereof.

And afterwards, to wit, on Tuesday, the 4th day of April, 1905, the same being the 157th judicial day of the regular October term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

April 4, 1905.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE.

**Hearing of Motion to Strike Amended Complaint
from Files.**

Now, at this day, comes the above-named plaintiff by Mr. J. C. Veazie and Mr. Frank F. Freeman, of counsel, and the defendant by Mr. Joseph Simon, of counsel and thereupon this cause comes on to be heard upon the motion of said defendant to strike from the files of this Court the amended bill of complaint herein, and the Court having heard the arguments of counsel will advise thereof.

And afterwards, to wit, on Thursday, the 8th day of June, 1905, the same being the 41st judicial day of the regular April term of said Court—Present, the Honorable WILLIAM B. GILBERT, United States Circuit Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

June 8, 1905.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE.

**Order Fixing Date of Hearing Motion to Strike
Amended Complaint from Files.**

Now, at this day, on motion of Mr. Frank F. Freeman, of counsel, for the above-named plaintiff, it is ordered that the hearing of this cause, upon the motion of the defendant herein to strike from the files the amended complaint filed in this cause, be, and the same is hereby, set for June 14, 1905.

And afterwards, to wit, on Wednesday, the 14th day of June, 1905, the same being the 46th judicial day of the regular April term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge, for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

June 14, 1905.

JOHN J. CAMBERS

vs.

FIRST NATIONAL OF BUTTE, et al.

**Hearing of Motion to Strike Amended Complaint
from Files.**

Now, at this day, comes the above-named plaintiff by Mr. Frank F. Freeman, of counsel, and the defendants herein by Mr. Joseph Simon, of counsel, and thereupon this cause comes on to be heard upon the motion of said defendants for an order striking from the files the amended complaint herein, and the Court having heard the arguments of counsel, will advise thereof.

And afterwards, to wit, on Saturday, the 17th day of June, 1905, the same being the 49th judicial day of the regular April term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge, for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

June 17, 1905.

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Cor-
poration), ANDREW J. DAVIS and
GEORGE W. ANDREWS,

Defendants.

**Order Denying Motion to Strike Amended Com-
plaint from Files.**

This cause was heard upon the motion of the de-
fendants herein to strike from the files the amended
complaint herein, and was argued by Mr. Frank
F. Freeman, of counsel, for said plaintiff, and by
Mr. Joseph Simon, of counsel for said defendants.
On consideration whereof, it is now here ordered
and adjudged that said motion to strike from the
files the amended complaint herein be, and the same
is hereby, denied.

And it is further ordered that the defendants
herein be, and they are hereby, allowed twenty days
from this date, in which to plead to said amended
complaint.

And afterwards, to wit, on the 17th day of June, 1905, there was duly filed in said court an opinion, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Corporation), ANDREW J. DAVIS and
GEORGE W. ANDREWS,

Defendants.

Opinion.

A. E. REAMES and VEAZIE and FREEMAN, for Plaintiff,

DOLPH, MALLORY, SIMON & GEARIN,
for Defendant, First National Bank of Butte.

DE HAVEN, J.—In my opinion the plaintiff in both the original and amended complaints attempts to state a cause of action arising upon contract, viz: The contract under which he alleges that he deposited with the defendant bank the money sued for. By the amendment, the theory upon which the action is sought to be maintained is changed by omitting in the certain allegations found in the original

complaint. Whether the amended complaint states a cause of action, or whether the plaintiff will be entitled to recover if it shall appear upon the trial that the judgment recovered against the plaintiff and the defendants Davis and Andrews, in the District Court of Silver Bow County, Montana, has not been in fact paid and fully satisfied by the plaintiff, are questions which do not properly arise upon this motion.

The motion to strike the amended complaint from the files is denied, and that the defendant First National Bank of Butte is allowed 20 days to plead to the amended complaint.

Filed June 17, 1905. J. A. Sladen, Clerk U. S. Circuit Court, for the District of Oregon.

And afterwards, to wit, on the 19th day of June, 1905, there was duly filed in said court a demurrer of defendant, First National Bank of Butte, to the amended complaint, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE, AN-
DREW J. DAVIS, and GEORGE W. AN-
DREWS,

Defendants.

Demurrer to Amended Complaint.

Now, at this time comes the defendant First National Bank of Butte, and demurs to the amended complaint of the plaintiff herein filed, because it appears upon the face thereof that said amended complaint does not state facts sufficient to constitute a cause of action against this defendant.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant, First National Bank of
Butte.

District of Oregon,—ss.

Due service of the within demurrer by the delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this 19th day of June, 1905, is hereby admitted.

VEAZIE & FREEMAN,

Of Attorneys for Plaintiff.

Filed June 19, 1905. J. A. Sladen, Clerk U. S.
Circuit Court, for District of Oregon.

And afterwards, to wit, on Friday, the 4th day of August, 1905, the same being the 89th judicial day of the regular April term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge, for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2858.

August 4, 1905.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE et al.

Order Dissolving Attachment.

Now, at this day, this cause coming on to be heard upon the motion of the plaintiff herein that the attachment, heretofore issued herein, be dissolved, the defendant having heretofore generally appeared in this cause, it is ordered that the attachment herein be, and the same hereby is, dissolved.

And afterwards, to wit, on Tuesday, the 30th day of January, 1906, the same being the 93d judicial day of the regular October term of said Court—the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2858.

January 30, 1906.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE.

Order Fixing Date of Hearing Demurrer to Amended Complaint.

Now, at this day, on motion of Mr. Frank F. Freeman, of counsel for the above-named plaintiff, it is ordered that the hearing of this cause, upon the demurrer to the amended complaint herein be, and the same is hereby, set for Tuesday, February 6, 1906.

And afterwards, to wit, on Tuesday, the 6th day of February, 1906, the same being the 99th judicial day of the regular October term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

February 6, 1906.

JOHN J. CAMBERS.

vs.

FIRST NATIONAL BANK OF BUTTE et al.

Hearing of Demurrer to Amended Complaint.

Now, at this day, comes the above-named plaintiff by Mr. Frank F. Freeman, of counsel, and the defendants by Mr. Joseph Simon, of counsel, and thereupon this cause comes on to be heard upon the demurrer to the amended complaint herein, and the Court, having heard the arguments of counsel, will advise thereof.

And afterwards, to wit, on Monday, the 26th day of March, 1906, the same being the 140th judicial day of the regular October term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2858.

March 26, 1906.

JOHN J. CAMBERS,

Plaintiff.

vs.

FIRST NATIONAL BANK OF BUTTE (a Corporation), ANDREW J. DAVIS and GEORGE W. ANDREWS,

Defendants.

Order Sustaining Demurrer to Amended Complaint.

This cause was heard by the Court upon the demurrer to the amended complaint herein, and was argued by Mr. Frank F. Freeman, of counsel for the above-named plaintiff, and by Joseph Simon, of counsel for the defendants herein. On consideration whereof, it is now here ordered and adjudged

twenty days from this date in which to amend his that said demurrer be, and the same is hereby, sustained.

Whereupon, on motion of said plaintiff, it is ordered that said plaintiff be, and he is hereby, allowed complaint herein.

And afterwards, to wit, on the 26th day of March, 1906, there was duly filed in said court an opinion, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

JOHN J. CAMBERS

vs.

THE FIRST NATIONAL BANK OF BUTTE,
ANDREW J. DAVIS and GEORGE W.
ANDREWS.

Opinion.

VEAZIE & FREEMAN, for Plaintiff.

DOLPH, MALLORY, SIMON & GEARIN, for
Defendant Bank.

Omitting formal allegations, the complaint states, in brief, that on April 19, 1902, plaintiff had on deposit with the defendant bank \$10,000, on which date he entered into a contract with defendants, which is made a part of the complaint; that on March 20,

1902, in the District Court of Silver Bow County, State of Montana, there was rendered a joint judgment in favor of William Lowery and others as plaintiffs against the plaintiff herein and Davis and Andrews as defendants, for the sum of \$12,500, as recited in said contract, and that the liability of the defendants Davis and Andrews, and each thereof, on said bonds, is merged into said judgment; that by the terms of said contract, the defendant bank agreed to hold said deposit pending an appeal of the cause to the Supreme Court, and if the defendants Davis and Andrews should be required to pay such judgment, to indemnify them out of such deposit, but that if said defendants should not be required to pay said judgment, or any part thereof, then that it should return the same to plaintiff; that no appeal from said judgment was ever perfected, and none can now be taken; that within sixty days immediately prior to August 21, 1902, execution was issued upon said judgment, and placed in the hands of the sheriff, with directions to make the amount thereof as provided by law; that on said August 21, 1902, the sheriff "returned said execution, fully satisfied, to the clerk of said district court; that by the laws of the State of Montana then in force it became and was then the duty of said clerk to enter a satisfaction of said judgment upon the judgment docket of said court, and said clerk did thereupon, on said 21st day of August,

1902, duly enter a satisfaction of said judgment upon said judgment docket, and satisfy said judgment as to each and all the defendants in said cause, and said satisfaction, when so entered, constituted a full and complete satisfaction and discharge of said judgment, and the same was at said time fully satisfied and discharged"; that said satisfaction has never been vacated, and the time within which said judgment can be reinstated has long since passed; that defendants had or have not, nor have either of them, paid said judgment, or any part thereof, "nor are they or either or any of them liable to pay said judgment or any part thereof, nor can the same or any part thereof be enforced against them, or either or any of them"; that said sum of \$10,000 is still on deposit with said defendant bank, which it has never repaid.

The contract, after reciting that Cambers had \$10,000 on deposit with the bank, that Davis and Andrews had executed injunction bonds as sureties for Cambers, and that William Lowery and others had recovered judgment against Cambers, Davis, Andrews and others on such bonds, for \$12,500, stipulates, among other things, that the \$10,000 is to indemnify Davis and Andrews against any liability upon the injunction bonds, and that it may be used in assisting Cambers in securing a supersedeas bond on an appeal from said judgment, or during the pendency of a motion for a new trial; that said money

shall not be drawn by any of said sureties of Cambers pending the appeal, but shall remain on deposit to be paid to said sureties in repayment of any sum or sums which they may be required to pay; but in case there is no liability on the part of said sureties, or said Davis and Andrews, by reason of said injunction or stay bond, then that it shall be paid to said Cambers or his order.

The bank interposed a demurrer to the complaint, on the ground solely that it does not state facts sufficient to constitute a cause of action.

WOLVERTON, District Judge:

The question is whether this complaint is sufficient. Being tested by a demurrer, it should be construed most strongly against the pleader. Proceeding, therefore, under the rule, I will examine the complaint so far as it may seem necessary to dispose of the question before me.

The pleading should state facts, that is, those probative in character, and not legal conclusions. The conclusions are such as the Court must deduce from the facts spread upon the record.

The action is upon the contract of indemnity, set out by exhibit, entered into between Cambers on the one part and Davis, Andrews, and the First National Bank on the other; the purpose of the contract being that Cambers might furnish indemnity to Davis and Andrews against any liability they might have assumed by going upon the injunction bonds for him,

and for further indemnity in securing a supersedeas, which latter purpose does not now become material.

The bank occupies merely the position of a bailee of the fund deposited, to hold it under the conditions stated in the contract. It could not be called upon to dispose of it otherwise. So far as the bank is concerned, it therefore devolves upon the plaintiff to show that there is no liability yet remaining on the part of the sureties Davis and Andrews by reason of the injunction or stay bonds. The plaintiff has shown that the bonds have been sued on and a judgment obtained against the plaintiff Cambers and the defendants Davis and Andrews—indeed, the recitals of the contract establish as much—and that liability is thus shown against Davis and Andrews. The bank could not be called upon to deliver the fund to Cambers while such liability continues. The burden is therefore upon the plaintiff to show by apt allegations that Davis and Andrews have been relieved of that liability and the fund in bank liberated.

It is alleged that the liability of Davis and Andrews upon the injunction bonds has become merged into the judgment, and that henceforth the Court has to deal with the judgment alone. This may be granted.

Now, it was sought to show a satisfied judgment, and the process of such satisfaction is traced through an execution returned “fully satisfied” by the sher-

iff. This becomes the basis for the satisfaction of the judgment. What the clerk does under the Montana statutes, the effect of which is set out in the complaint, by way of satisfying the judgment is merely ministerial, and follows from the return of the execution, if it is shown thereby that the execution itself has been fully satisfied. This is legally deducible from the complaint. The return of the the sheriff on the execution should be a concise statement of facts, showing what he has done in pursuance of his authority, and not of any conclusions of law. The regularity and legality of his acts should thus be made to appear. 17 Cyc. 1366-1367. So that if the sheriff had levied the execution upon property, and sold the same, and made the amount of the writ, or any part thereof, the return should show these facts, and the money having been brought into court, or otherwise disposed of according to law, the clerk could enter such satisfaction of the judgment as the facts of the return and the disposition of the money made under the execution would warrant; but without the proper basis for satisfying the judgment, the clerk could not perform his ministerial act and enter satisfaction.

Again, "Payment of the amount of the debt for which an execution has issued either to the execution plaintiff, or to the proper officer, or to any other person authorized to receive payment, will operate as a complete satisfaction and discharge of the execution,

and when the payment is made to the officer, it makes no difference, as far as the defendant is concerned, that the money is not paid over to the plaintiff, the remedy of the plaintiff in such case being against the officer and the sureties on his official bond." 11 Am. & Eng. Ency. of Law (2d ed.), 713, 714.

Such being the law, I am of the opinion that it is a conclusion of law, and not the statement of a probative fact, to allege merely that said sheriff "returned said execution fully satisfied." If the sheriff made the money that is the amount of the judgment by levy upon property of the debtor, and sale thereof, and returned the same with the execution, which would be in satisfaction thereof, or if the money had been paid to the execution plaintiff, or to the officer, in satisfaction of the execution; or, going further, if the judgment had been settled out of court, and in pursuance thereof, or of any other agreement or understanding whereby it resulted in the plaintiff directing the execution to be returned satisfied the facts should have been alleged leading up to that result. Any of these would indicate a release of Davis and Andrews from liability upon the judgment, and the result would be deducible from the facts alleged. Not so under the present allegation, which is void of facts, being a mere conclusion of law. As I have seen, the satisfaction of the judgment, if satisfied at all, must result through a merely ministerial act of

the clerk on the satisfaction of the execution; but if the execution has not been shown by proper allegations to have been satisfied, then the judgment could not have been legally satisfied. So I conclude that the complaint does not state facts sufficient to show that the defendants Davis and Andrews have been relieved of their liability under the judgment obtained against them, and consequently to show that the bank has become accountable to plaintiff for the money placed on deposit with it. It should go further and state how the execution was satisfied. Several of the other allegations of the complaint quoted in the statement are also mere conclusions. The demurrer of the bank will, therefore, be sustained, and it is so ordered.

Filed March 26, 1906. J. A. Slanden, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on Thursday, the 7th day of June, 1906, the same being the 52d judicial day of the regular April term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

June 7, 1906.

JOHN J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE, AN-
DREW J. DAVIS and GEORGE W. AN-
DREWS.

Judgment.

Now, at this day, comes the plaintiff in the above-entitled cause, by Mr. F. F. Freeman, of counsel, and the defendant, the First National Bank of Butte, by Mr. Joseph Simon, of counsel, whereupon, said defendant moves the Court for judgment herein against said plaintiff; and it appearing to the Court that the demurrer filed by said defendant to the amended complaint of said plaintiff was sustained by this Court, and that said plaintiff has failed to amend his said complaint, or further plead herein, and it further appearing that said plaintiff does not desire to amend his complaint, or further plead in this cause,

It is considered that said plaintiff take nothing by this action; that said defendant go hence without day and that it have and recover of and from said plain-

tiff its costs and disbursements herein taxed at \$41.90.

And afterwards, to wit, on the 7th day of August, 1906, there was duly filed in said court a petition for writ of error, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Corporation), ANDREW J. DAVIS, and GEORGE W. ANDREWS,

Defendants.

Petition for Writ of Error.

The plaintiff above named, John J. Cambers, conceiving himself aggrieved by the judgment rendered in the above-entitled cause, on June 7, A. D. 1906, in the above-entitled court, complains and says that on the 7th day of June, 1906, this Court in the above-entitled cause entered judgment herein in favor of the defendant, First National Bank of Butte, and against this plaintiff, John J. Cambers, sustaining the demurrer of said defendant to the amended complaint of this plaintiff, and dismissing the plaintiff's

amended complaint herein with costs to the defendant, in which judgment certain errors were committed to the prejudice of this plaintiff, and whereby manifest error hath intervened to the great damage of the said plaintiff, all of which will more in detail appear from the assignment of error of the said plaintiff, which is filed with this petition.

Wherefore, the said plaintiff prays for the allowance of a writ of error, and that said writ of error may issue on his behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that said judgment be reversed and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Circuit Court of Appeals.

Dated August 6, 1906.

A. E. REAMES,
J. C. VEAZIE,
FRANK F. FREEMAN,
Attorneys for Said Plaintiff.

The foregoing petition for writ of error is hereby allowed this 7th day of August, 1906.

WM. H. HUNT,
Judge.

United States of America,
State and District of Oregon,—ss.

Due service of the within petition for writ of error is hereby accepted in Multnomah County, Oregon, in said district this 6th day of August, 1906, by receiving a copy thereof duly certified to as such by Frank F. Freeman, of the attorneys for the plaintiff, John J. Cambers.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant, First National Bank of
Butte.

Filed August 7, 1906. J. A. Sladen, Clerk U. S.
Circuit Court for the District of Oregon.

And afterwards, to wit, on the 7th day of August,
1906, there was duly filed in said court an as-
signment of errors, in words and figures as fol-
lows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Cor-
poration), ANDREW J. DAVIS, and
GEORGE W. ANDREWS,

Defendants.

Assignment of Errors.

The plaintiff in error, John J. Cambers, in connection with his petition for a writ of error herein, makes the following assignment of errors, upon which said plaintiff will rely in the Circuit Court of Appeals for the Ninth Circuit for relief from the judgment rendered in the said cause on June 7, 1906, to wit:

I.

The Court erred in entering judgment in favor of the defendant and against the plaintiff, sustaining the demurrer filed by the defendant to the amended complaint in said cause.

II.

The Court erred in entering judgment in favor of the defendant and against the plaintiff that the amended complaint be dismissed with costs to the defendant.

Dated August 6, 1906.

A. E. REAMES,

J. C. VEAZIE,

FRANK F. FREEMAN,

Attorneys for Plaintiff.

United States of America,

District of Oregon,—ss.

Due service of the within assignment of errors is hereby accepted in Multnomah County, Oregon, in

said district, this 6th day of August, 1906, by receiving a copy thereof, duly certified as such by Frank F. Freeman, of the attorneys for plaintiff, John J. Cambers.

DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant, First National Bank of
Butte.

Filed August 7, 1906. J. A. Sladen, Clerk U. S.
Circuit Court, for the District of Oregon.

And afterwards, to wit, on Tuesday, the 7th day of August, 1906, the same being the 103d judicial day of the regular April term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Corporation), ANDREW J. DAVIS, and
GEORGE W. ANDREWS,

Defendants.

Order Allowing Writ of Error.

Now, at this day, this cause comes on to be heard upon the petition of the plaintiff, John J. Cambers, for a writ of error and for the allowance thereof, said plaintiff appearing by Frank F. Freeman, Esquire, his attorney. And it appearing to the Court that the said plaintiff has filed his petition for a writ of error herein, and has herewith filed his assignment of error—

It is ordered that the said writ of error be, and the same is hereby allowed, and that a citation issue and be served as by law provided. It is ordered that the amount of the bond to be given by the said plaintiff, John J. Cambers, be fixed at the sum of five hundred dollars, with good and sufficient sureties to be approved by the Court or the Judge thereof, and the said bond when so filed shall operate as a supersedeas bond in said cause.

Dated August 7th, 1906.

WM. H. HUNT,
Judge.

Filed August 7, 1906. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on the 7th day of August, 1906, there was duly filed in said court a bond on writ of error, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

JOHN J. CAMBERS,

Plaintiff,

vs.

FIRST NATIONAL BANK OF BUTTE (a Cor-
poration), ANDREW J. DAVIS, and
GEORGE W. ANDREWS,

Defendants.

Bond on Writ of Error.

Know all men by these presents, that we, John J. Cambers, as principal, and the United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the First National Bank of Butte, a corporation, in the sum of five hundred dollars, to be paid to said defendant, its successors or assigns, executors or administrators. To which payment well and truly to be made, we bind ourselves and each of us jointly and severally; and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated August 7th, 1906.

Whereas, the above-named John J. Cambers, plaintiff in the above-entitled cause, has applied for and obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment rendered in the above-entitled

cause by the Circuit Court of the United States for the District of Oregon, and a citation has issued as by law provided,

Now, therefore, the condition of this obligation is such that if the above-named John J. Chambers, the plaintiff, shall prosecute said writ of error to effect, and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN J. CAMBERS, [Seal]

By FRANK F. FREEMAN,

His Attorney.

[Seal of United States Fidelity & Guaranty Co.]

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY, [Seal]

By J. L. HARTMAN,

Its Attorney in Fact.

Signed, sealed and delivered in presence of us as witnesses:

K. V. LIVELY.

H. A. STEWART.

The within bond and surety are hereby approved
August 7th, 1906.

WILLIAM H. HUNT,

Judge.

Filed August 7, 1906. J. A. Sladen, Clerk U. S.
Circuit Court for the District of Oregon.

And afterwards, to wit, on Saturday, the 25th day of August, 1906, the same being the 119th judicial day of the regular April term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2858.

August 25, 1906.

J. J. CAMBERS

vs.

FIRST NATIONAL BANK OF BUTTE et al.

Order Extending Time to File Transcript.

Now, at this time, it appearing to the Court that there is not sufficient time in which the clerk of this court can prepare the transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in this cause, it is ordered that the time heretofore allowed in which to file said transcript of record in said Circuit Court of Appeals be, and the same is hereby, extended thirty days.

WILLIAM H. HUNT,

Judge.

Filed August 25, 1906. J. A. Sladen, Clerk U. S. Circuit Court, for the District of Oregon.

And afterwards, to wit, on the 2d day of October, 1906, there was duly filed in said court an order extending time to file transcript of record, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2858.

October 1, 1906.

JOHN J. CAMBERS,

vs.

FIRST NATIONAL BANK OF BUTTE, AN-
DREW J. DAVIS and GEORGE AN-
DREWS.

Order Extending Time to File Transcript.

Now, at this day, for good cause to the Court shown, it is ordered that the time heretofore allowed the above-named plaintiff in which to file the transcript of record in this cause, in the Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended thirty days.

WM. B. GILBERT,

Circuit Judge.

Filed October 2, 1906. J. A. Sladen, Clerk U. S.
Circuit Court for the District of Oregon.

Clerk's Certificate to Transcript.

The United States of America,
District of Oregon,—ss.

I, J. A. Sladen, Clerk of the Circuit Court of the United States for the District of Oregon, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages numbered from 3 to 64, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of John J. Cambers, Plaintiff, and Plaintiff in Error, vs. First National Bank of Butte, a Corporation, Defendant, and Defendant in Error, as the same appear of record and on file in my office and custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 2d day of October, A. D. 1906.

[Seal]

J. A. SLADEN,

Clerk.

[Endorsed]: No. 1408. United States Circuit Court of Appeals for the Ninth Circuit. John J. Cambers, Plaintiff in Error, vs. The First National Bank of Butte, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the District of Oregon.

Filed November 20, 1906.

F. D. MONCKTON,
Clerk.

